



April 4, 2019



The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

RE: Senate Bill 518 (Wieckowski) - Public records: disclosure: court costs and attorney's fees - OPPOSE
Hearing Date: April 23, 2019 – *Senate Judiciary Committee*

Dear Senator Jackson:

The California Special Districts Association (CSDA), League of California Cities (LCC), California State Association of Counties (CSAC), California Downtown Association (CDA), Rural County Representatives of California (RCRC), and Association of California Healthcare Districts (ACHD) are respectfully opposed to Senate Bill 518 (Wieckowski), which would eliminate the utility of Section 998 settlement offers in California Public Records Act (CPRA) lawsuits against public agencies. This bill will incentivize additional litigation and increase costs to public agencies for CPRA disputes.

The CPRA was created to ensure the public has access to information concerning the conduct of the people's business as a fundamental and necessary right of every person in this state, a charge our public agencies do not take lightly. Additionally, under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure. Failure of a public agency to disclose records pursuant to the CPRA can result in significant financial consequences for the agency from potential litigation.

In recent years, our California member agencies have seen an enormous increase in the number of CPRA requests coming in from all over the nation, as well as the number of records being sought within each request, sometimes seeking more than 10,000 records. For example, the City of San Diego reported that from 2012 (749) to 2018 (4,824) the city saw a 644 percent increase in CPRA requests. In 2009, the UC system received a total of 3,266 CPRA requests. In 2017, it received 16,921, an increase of 418 percent. Consequently, with the increase in requests we've also witnessed a significant increase in litigation. Lawsuits are sometimes brought by serial litigants seeking to exploit minor or de minimis non-compliance with the CPRA by a public agency in an effort to obtain a judgment and substantial attorneys fees.

Under current law, records requesters that believe a public agency has improperly withheld a record may sue the agency immediately. There is no "meet and confer" requirement that a requester work with an agency to resolve a dispute over any records that may have been withheld by an agency. Additionally, should a requestor prevail in court by having even a single record released that had previously been withheld, the CPRA mandates that a court award costs and reasonable attorney fees to the plaintiff. Offers to compromise made under Code of Civil Procedure section 998 ("Section 998 offers") are intended to encourage litigants to settle their disputes in an amicable and reasonable fashion and avoid excessive litigation costs.

Section 998 permits either party involved in litigation, plaintiff or defense, to make an offer to settle a dispute before proceeding to trial or arbitration, and if it is not accepted and the litigating party fails to achieve a better result than they could have achieved by accepting the Section 998 offer, the party is not entitled to post-offer costs and must pay the defendant's post-offer costs. Proposing to eliminate this common litigation practice would discourage plaintiffs' attorneys in CPRA cases from settling because they would face no consequence for rejecting a reasonable and fair Section 998 offer, but potentially significantly more to gain in fees by proceeding with a costly litigation process, even if an attorney's client receives no additional benefit other than what would have been offered in a settlement. SB 518 creates a lopsided benefit to plaintiff attorneys over public agencies that encourages costly litigation, when a simple agreement could be reached.

For these reasons our agencies are respectfully opposed to SB 518 (Wieckowski). Should you have any questions about our position please contact Dillon Gibbons (CSDA) at 916-442-7887, Dane Hutchings (LCC) at 916-658-8200, Geoff Neill (CSAC) at 916-327-7500, Andrew Thomas (CDA) at 310-470-1812, Paul A. Smith (RCRC) at 916-447-4806, and Amber King (ACHD) at 916-266-5207.

Sincerely,



Dillon Gibbons
Sr. Legislative Representative



Dane Hutchings
Legislative Representative



Geoff Neill
Legislative Representative



Andrew Thomas
President



Paul A. Smith
VP Government Affairs



Amber King
VP, Advocacy & Membership

CC: The Honorable Bob Wieckowski
Members, Senate Judiciary Committee
Margie Estrada Caniglia, Chief Counsel, Senate Judiciary Committee
Morgan Branch, Consultant, Senate Republican Caucus